



DEPARTMENT OF THE NAVY

OFFICE OF THE CHIEF OF NAVAL OPERATIONS

2000 NAVY PENTAGON

WASHINGTON, DC 20350-2000

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Ser DNS-36JP/15U105049

January 15, 2015

Mr. David Becker
Law Office of David H. Becker, LLC
833 SE Main Street #302
Portland, OR 97214

Dear Mr. Becker:

SUBJECT: YOUR FREEDOM OF INFORMATION ACT (FOIA) REQUEST;
FOIA TRACKING NUMBER DON-NAVY-2014-001003

This is the final response to your Freedom of Information Act (FOIA) request dated January 22, 2014. Your request was received in our office on February 5, 2014.

During our initial interim response you were apprised that we had located 37 documents (290 pages) that may be responsive to your request. Upon review of the documents it was found that 4 of the documents (10 pages) were duplicates of documents already identified. Therefore, you are now advised that only 33 documents (280 pages) had been identified as potentially responsive to your request. Of those documents, six (17 pages) were released to you on July 22, 2014.

Additionally, following that initial assessment, three classified documents were identified as responsive to item 5 of your request. As they are currently and properly classified under Executive Order 13526, they are being withheld in their entirety under 5 U.S.C. § 552 (b)(1). The names of the responsive documents are: "Report of Test Results: Evaluation of Affects of Wind Turbines on the APG-79 Airborne Electronically Steered Array Radar Systems" (draft dated 1-12-2011); "Wind Turbine Affects on Airborne Radar Systems" (dated 7-2011); and "Airborne Radar Wind Turbine Impact" (dated 6-26-2012).

On review of the remaining 27 documents (263 pages):

Documents Numbered 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 19, 20, 21, 23, and 24, (91 pages): These documents are being withheld under 5 U.S.C. § 552 (b)(5). These documents are various drafts of a proposed agreement that was never finalized or put into effect. As the project has been sold and is currently being worked out with a new developer, release of these documents would inhibit free flow of information, debate and negotiation with the new developer. These documents discuss multiple items currently under negotiation and the Navy's position, specifically with regard to potential mission impacts

and mitigation measures. As a result, release of these documents would also potentially limit the flexibility needed for operational missions.

Documents Numbered 25, 26, 27, 28, and 29 (81pages): These documents are being withheld under 5 U.S.C. § 552 (b)(1), (b)(5), and (b)(6). These documents are various drafts of a proposed agreement that was never finalized or put into effect. As the project has been sold and is currently being worked out with a new developer, release of these documents would inhibit free flow of information, debate and negotiation with the new developer. These documents discuss multiple items currently under negotiation and the Navy's position, specifically with regard to potential mission impacts and mitigation measures. As a result, release of these documents would also potentially limit the flexibility needed for operational missions. Additionally, these documents discuss information that is currently and properly classified under Executive Order 13526. Names and other personally-identifiable information were also withheld in instances when disclosure would constitute a clearly unwarranted invasion of the individual's personal privacy.

Document Number 22 (13 pages): Portions of this document are being withheld under 5 U.S.C. § 552 (b)(4) and (b)(5). Pages 6-9 are excerpts from Document Number 31, and withheld accordingly under (b)(4). Pages 10-11 are withheld under (b)(4), as they constitute graphs incorporating proprietary data of estimated Searchlight production by time of day and by month, and under (b)(5), as they include draft details of a proposed agreement that was never finalized or put into effect. This information is inextricably intertwined, and must therefore be withheld under both FOIA exemptions. Portions of page 12 are also withheld under (b)(5), as they refer to draft details of a proposed agreement that was never finalized or put into effect. Aside from issues of inextricability, release of this information would inhibit free flow of information, debate and negotiation with the new developer. This document discusses multiple items currently under negotiation and the Navy's position, specifically with regard to potential mission impacts and mitigation measures. As a result, release of this information would also potentially limit the flexibility needed for operational missions.

Document Number 31 (8 pages): This document is being withheld in its entirety under 5 U.S.C. § 552 (b)(4). As you may be aware, Duke Energy sold the Searchlight project to an affiliate of Apex Clean Energy. Upon review of this document, Apex Clean Energy advised that disclosure of this document would cause substantial competitive harm to the company. This document includes specific project information relating to expected commercial operation dates and wind speed which is highly confidential to the company and disclosure of which could interfere with the companies' ability to market the project in a competitive landscape.

Documents Numbered 3, 17, and 33 (51 Pages) are being released to you in their entirety.

In summary, Documents Numbered 1, 4, 16, 18, 30, and 32 were released in their entirety on June 16, 2014. Per this letter, Documents Numbered 3, 17, 33, and portions of Document Number 22 are released to you. All other documents have been withheld under 5 U.S.C. § 552 (b)(1), (b)(4), (b)(5), and/or (b)(6), as noted above.

Because your request is partially denied, you are advised of your right to appeal the denial of your request by writing to:

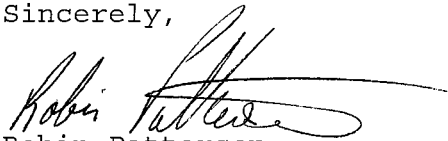
Office of the Judge Advocate General
1322 Patterson Ave, SE, Ste 3000
Washington Navy Yard, DC 20374-5066

Your appeal must be postmarked within sixty calendar days from the date of this letter. A copy of your initial request and this letter must accompany the appeal. The appeal should be marked "FREEDOM OF INFORMATION APPEAL" both on the envelope and the face of the letter. In order to expedite the appellate process and ensure full consideration of your appeal, your appeal should contain a brief statement of the reasons you believe this decision to be in error.

In this instance, the fees associated with the processing of this request were below the minimum threshold and have not been assessed. Please be advised, however, that fees, fee categories, and fee waivers are determined on a case-by-case basis, and a previous determination has no influence on future determinations.

Questions regarding the action this office has taken during the initial processing of your request may be directed to our FOIA service center at (202) 685-0412.

Sincerely,

A handwritten signature in black ink, appearing to read "Robin Patterson", with a long, sweeping horizontal line extending to the right.

Robin Patterson
Head, DON FOIA/PA Program Office